



**THE ATTORNEY GENERAL  
OF TEXAS**

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January 13, 1976

The Honorable Bevington Reed  
Commissioner  
Coordinating Board  
Texas College and  
University System  
P. O. Box 12788, Capitol Station  
Austin, Texas 78711

Opinion No. H-762

Re: Authority of the  
Coordinating Board, Texas  
College and University  
System, to control the  
cost of construction  
programs undertaken by  
public colleges and  
universities.

Dear Dr. Reed:

You have asked us:

Does the Coordinating Board, Texas  
College and University System have  
the authority and the obligation  
under [Education Code] Section 61.058,  
as amended by Senate Bill 706, 64th  
Texas Legislature, 1975, to regulate  
the expenditure of funds in dealing  
with construction and rehabilitation  
projects in institutions of higher  
education?

You explain that "[t]he term 'regulate' in this question  
refers to guiding the relationship of dollars to facilities  
space toward an efficient ratio as determined by Coordinating  
Board deliberation on each project."

Section 61.058 of the Texas Education Code, as amended  
[Acts 1975, 64th Leg., ch. 676, p. 2055] reads (emphasis  
added):

Sec. 61.058. Construction Funds  
and Development of Physical Plants

To assure efficient use of  
construction funds and the orderly  
development of physical plants to  
accommodate projected college student  
enrollments, the board shall:

- (1) determine formulas for space utilization in all educational and general buildings and facilities at institutions of higher education;
- (2) devise and promulgate methods to assure maximum daily and year-round use of educational and general buildings and facilities, including but not limited to maximum scheduling of day and night classes and maximum summer school enrollment;
- (3) consider plans for selective standards of admission when institutions of higher education approach capacity enrollment;
- (4) require, and assist the public senior colleges and universities, medical and dental units, and other agencies of higher education in developing, long-range plans for campus development;
- (5) endorse, or delay until the next succeeding session of the legislature has the opportunity to approve or disapprove, the proposed purchase of any real property by an institution of higher education, except a public junior college;
- (6) develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use;

(7) ascertain that the standards and specifications for new construction, repair, and rehabilitation of all buildings and facilities are in accordance with Chapter 324, Acts of the 61st Legislature, Regular Session 1969, as amended (Article 678(g) Vernon's Texas Civil Statutes); and

(8) approve or disapprove all new construction and repair and rehabilitation of all new buildings and facilities at institutions of higher education financed from any source other than ad valorem tax receipts of the public junior colleges, provided that:

(A) the board's consideration and determination shall be limited to the purpose for which the new or remodeled buildings are to be used and their gross dimensions to assure conformity with approved space utilization standards and the institution's approved programs and role and scope;

(B) the requirement of approval for new construction financed from other than appropriated funds applies only to projects the total cost of which is in excess of \$100,000;

(C) the requirement of approval for major repair and rehabilitation of buildings and facilities applies only to projects the total cost of which is in excess of \$25,000; and

(D) the requirement of approval or disapproval by the board does not apply to any new construction or major repair and rehabilitation project that is specifically approved by the legislature.

Subsection (8) specifically provides that when approving or disapproving new construction projects and repair and rehabilitation of buildings the Coordinating Board's consideration is limited to two factors. The Board may consider (1) whether the purpose of the building conforms to the institution's approved programs, role and scope, and (2) whether the gross dimensions of the building are consistent with the Board's space utilization standards and with the institution's approved programs, role and scope. There is no express or implied authority in subsection (8) for the Coordinating Board to specifically regulate the expenditure of funds for construction or rehabilitation projects. Of course, while the Board may not specifically regulate the expenditure of funds, its promulgation of space utilization standards and determination of an institution's programs, role and scope will necessarily have an indirect effect on the amount of funds which will be expended for construction and rehabilitation of buildings.

Your second question is:

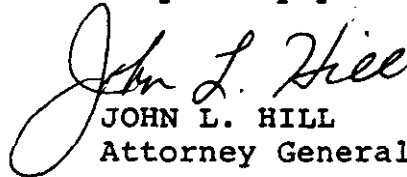
If the response to question #1 is negative, does the Coordinating Board have the authority to consider cost as a factor in its approval or disapproval of institutional requests for new construction and/or major repair and rehabilitation projects?

As in the answer to your first question, subsection (8) specifically limits the factors the Board may consider in approving or disapproving construction and rehabilitation projects, and the factors listed do not include cost. Therefore, the Board may not utilize a cost consideration when considering the proposals submitted to it.

S U M M A R Y

The Coordinating Board, Texas College and University System, does not have the authority to regulate the expenditure of construction funds or to consider cost as a factor in determining whether to approve or disapprove an institution's application for the construction, rehabilitation or repair of buildings or facilities at institutions of higher education. However, its promulgation of space utilization standards and determination of an institution's program, role and scope will indirectly affect the amount of funds expended for construction and rehabilitation of buildings.


Very truly yours,

  
JOHN L. HILL

Attorney General of Texas

APPROVED:

  
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Opinion Committee

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